

**MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS  
COUNTY BOARD OF ADJUSTMENT HELD **TUESDAY, SEPTEMBER 13,**  
**2011**, NORTHLAND OFFICE CENTER, VIRGINIA, MN, 9:00 a.m. – 12:15 p.m.**

**Board of Adjustment members in attendance:**

Diana Werschay – Chair  
Tom Coombe  
Steve Filipovich  
Kurt Johnson  
David Peterson  
David Pollock

Decision/Minutes for the following public hearing matters are attached:

**NEW BUSINESS:**

- A. Michael Van Duker, S36, T62N, R16W (Greenwood)
- B. Derik Schaefer, S3, T56N, R16W (unorganized)
- C. Richard Fosse, S18, T62N, R13W (Morse)
- D. Paul Olsen, S23, T63N, R19W (Field)
- E. Dennis Grigal, S16, T66N, R19W (Camp Five)
- F. Kathleen Hollander, S18, T54N, R12W (Pequaywan)
- G. Gerald Smith, S3, T52N, R15W (Fredenberg)
- H. Adam Lilyquist, S36, T51N, R16W (Grand Lake)
- I. Mary Morris, S35, T56N, R15W (Colvin)

**OTHER BUSINESS:**

**Motion by Peterson/Filipovich** to approve the minutes of the August 16, 2011 meeting.

**In favor:** Werschay, Coombe, Filipovich, Johnson, Peterson, Pollock – 6

**Opposed:** None - 0

**Motion carried 6-0**

**PUBLIC HEARING:**

The first hearing item was for Michael Van Duker, S36, T62N, R16W (Greenwood) at 1940 Lavell Road, Forbes, MN. *Tyler Lampella*, St. Louis County Planner, reviewed the staff report as follows:

- A. The property is located on Pike Bay on Lake Vermilion.
- B. The applicant purchased the undeveloped parcel in March 2011.
- C. The lot was improperly created in 2004.
- D. The adjacent parcel created from the lot division has already been developed.
- E. Because of the zoning change in 2009 requiring a larger lot size, the parcel cannot be platted because it does not meet minimum zoning requirements and requires a variance.

*Tyler Lampella* reviewed staff's conclusions as follows:

1. The request of the applicant is substantial because the applicant is asking for variance from St. Louis County Subdivision Ordinance 33 requiring the platting of properties such as the subject parcel.
2. The variance will not have an effect on government services for the following reason(s): a) the use will be residential like adjacent parcels; b) the level of government services is the same for platted versus unplatted parcels.
3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because it is developed with lots of similar size or smaller.
4. The following alternatives could be used to eliminate the need for variance or decrease the extent of the variance being requested: a) the parcel does not meet current zoning requirements and as such it cannot be platted; b) short of treating the lot as unbuildable, a variance is the only option.
5. The practical difficulty occurred because the lot was created improperly and now the zoning has changed. If the parcel split had gone through the proper process in 2004, the practical difficulty would not exist.
6. The division was completed in 2004.
7. There are similar parcels in the area. The other parcel created at the same time as the subject parcel is similar in size.
8. The county would benefit by the enforcement of the ordinance if compliance were required because the subdivision ordinance is in place to ensure that small parcels have adequate septic area, legal access, accurate surveys and overall assurance that the parcels can support a three bedroom dwelling.
9. Staff does not know the violation was intentional because it happened in 2004 and the county does not administer the zoning in Greenwood Township. The current township zoning director was not working in that capacity at the time of the parcel creation.
10. Taking everything already mentioned into consideration, the variance should be approved because of a lack of options and the fact that the Township does not object.

*Tyler Lampella* noted one item of correspondence from Polly Carlson-Voiles and Steve Voiles with concerns.

*Donna O'Connor*, Environmental Services, via report, stated that Michael Van Duker has a Subsurface Sewage Treatment System (SSTS) design and an application pending for a three-bedroom mound system and expansion area has been designated.

*Michael Van Duker*, the applicant, stated he has removed a number of trees but is well within the 25 percent allowed.

No audience members spoke on the proposal.

## **DECISION**

**Motion by Coombe/Peterson**, to approve a variance to allow the creation of a 2.4 acre parcel without platting with the condition that the sewage treatment shall be handled in a manner acceptable to the St. Louis County Environmental Services Department.

**In Favor:** Coombe, Filipovich, Johnson, Peterson, Pollock, Werschay – 6

**Opposed:** None – 0

**Motion carried 6-0**

The second hearing item was for Derik Schaefer, S3, T56N, R16W (unorganized) at 6455 Wilson Road, Makinen, MN. *Tyler Lampella*, St. Louis County Planner, reviewed the staff report as follows:

- A. The request is for an accessory building 52 feet from a tributary stream.
- B. The property is on a 40 acre parcel. A majority of the property is open field. Development is near the road and along the creek.
- C. One garage has been removed. The proposed garage would be located the same distance from the stream as the garage that was removed.

*Tyler Lampella* reviewed staff's conclusions as follows:

1. The request of the applicant is substantial because the applicant is asking for variance of a 52 foot setback from a stream where St. Louis County Ordinance 46 requires 200 feet for all river classes.
2. The variance will not have an effect on government services because the property is currently developed and adding a garage will not affect the level of government services required.
3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because two of the three adjacent parcels also have nonconforming structures with respect to the setback from the stream. The properties in this area have been developed as farmsteads for a very long time.
4. An alternative that could be used to eliminate the need for variance or decrease the extent of the variance being requested is that there is room to construct a new garage on the property that meets all setbacks.
5. The practical difficulty occurred because of the way the property was developed. The property was developed prior to the current setback requirements.

*Tyler Lampella* noted no items of correspondence.

*Donna O'Connor*, Environmental Services, via report, stated that the Schaefer property is served by a mound system installed in 1999 designed for four bedrooms. Replacement area has been designated and is not impacted by the proposed garage.

*Derik Schaefer*, the applicant, stated that they did try to meet setbacks with the garage, but the hardship would have been to locate the garage too far from the house.

No audience members spoke on the proposal.

## **DECISION**

**Motion by Peterson/Filipovich**, to approve a variance to allow a garage to be constructed at a 52 foot setback from Mud Hen Creek, with the condition that the structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.

**In Favor:** Coombe, Filipovich, Johnson, Peterson, Pollock, Werschay – 6

**Opposed:** None – 0

**Motion carried 6-0**

The third hearing item was for Richard Fosse, S18, T62N, R13W (Morse) at 1161 Leland Road, Maplewood, MN. *Tyler Lampella*, St. Louis County Planner, reviewed the staff report as follows:

- A. The parent parcel was just over nine acres.
- B. The owner sought permission to divide the property in July 2007 where minimum lot size would have been 2.5 acres.
- C. In December 2007, Ordinance 46 was amended making the minimum lot size 4.5 acres.
- D. The parcel was divided in 2008 after Ordinance 46 was amended.
- E. There is an existing cabin on the property from before the parent parcel was divided.

*Tyler Lampella* reviewed staff's conclusions as follows.

- 1. The request of the applicant is not substantial because the applicant is asking for a variance to create a 4.08 acre parcel where 4.5 acres is the requirement. If the parcel would have been created in 2007, it would have exceeded the minimum zoning requirement of 2.5 acres.
- 2. The variance will not have an effect on government services for the following reasons: a) the subject parcel is currently developed with a dwelling; b) the level of government services will not change as a result of this variance.
- 3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because the parcel is larger than many parcels in the area. This slightly undersized parcel is mitigated by the fact that it is bordered on two sides by public land which is not likely to be subdivided.
- 4. An alternative that could be used to eliminate the need for variance or decrease the extent of the variance being requested would be for the applicant to purchase an additional .42 acres, however, the property to the east and south is not privately owned.
- 5. The practical difficulty occurred because the previous owner of the subject parcel was not likely aware of the ordinance change.
- 6. The division was completed on December 2, 2008.
- 7. There are similar sized parcels in the area.
- 8. The county would benefit by the enforcement of the ordinance if compliance were required because the parcel would conform to lot size requirements.
- 9. Staff does not know if the violation was intentional. The former owner had checked with staff to ensure that the parcel division was allowed.

*Tyler Lampella* noted one item of correspondence from Eugene Zabinski, Town of Morse, in support of the variance request.

*Donna O'Connor*, Environmental Services, via report, stated that the Fosse property is served by a bed system installed in 2006 designed for two bedrooms. Expansion area has been designated and is not impacted by the proposed addition. The ten foot setback from building to septic tank

must be maintained. A licensed installer will need to submit plans for the alteration to the system and the tank moved before a building permit issued.

*Dave Zupec*, 1124 East Camp Street, Ely, MN, applicant's representative, stated that they were before the Morse Town Board and are ready to start building.

No audience members spoke on the proposal.

## **DECISION**

**Motion by Peterson/Coombe**, to approve a variance to allow the creation of a 4.08 acre parcel with the condition that the parcel shall have an address assigned by 911 Communications.

**In Favor:** Coombe, Filipovich, Johnson, Peterson, Pollock, Werschay – 6

**Opposed:** None – 0

**Motion carried 6-0**

The fourth hearing item was for Paul Olsen, S23, T63N, R19W (Field) at 7269 Tower Biwabik Road, Embarrass, MN. *Mark Lindhorst*, St. Louis County Planner, reviewed the staff report as follows.

- A. The proposal is to build a principal dwelling addition and accessory building.
- B. The parcel is located in an old plat in Field Township along a railroad track.
- C. The Forest Agricultural Management (FAM) zone district only allows two percent lot coverage.
- D. There was an addition constructed on the back of the dwelling that was removed years ago.

*Mark Lindhorst* reviewed staff's conclusions as follows.

- 1. The request of the applicant is substantial because the applicant is asking for variance(s) of 36 feet and 80 feet from the rear yard setback where 100 feet is required and to exceed the two percent lot coverage.
- 2. The variance will not have an effect on government services because the property is accessed off a public road and is used seasonally.
- 3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because the existing building has been there since 1910. Historically there was a porch to the rear which was removed many years ago.
- 4. Due to the current zoning and the size of the platted lots, a variance is required for any type of construction.
- 5. The practical difficulty occurred when the property was platted in 1916 and zoning regulations were established.

*Mark Lindhorst* noted one item of correspondence from Pat Chapman, Town of Field, in support of the variance request.

*Donna O'Connor*, Environmental Services, via report, stated that the Olsen property has a vault type privy and a non-pressurized greywater system that are not permitted and both need

upgrading. The owner had been sent information on proper construction and a permit application. If the variance is approved, the Environmental Services Department requests that the privy and greywater be upgraded and permitted before any building permits are issued. The Olsens did submit an application for a vaulted privy on September 12, 2011.

*Paul Olsen*, the applicant, stated he had nothing to add.

No audience members spoke on the proposal.

## **DECISION**

**Motion by Coombe/Peterson**, to approve a variance to allow a principal dwelling addition at 80 feet from the rear property line, an accessory building at 36 feet from the rear property line and to allow a maximum lot coverage of 1,020 square feet.

There were no conditions.

**In Favor:** Coombe, Filipovich, Johnson, Peterson, Pollock, Werschay – 6

**Opposed:** None – 0

**Motion carried 6-0**

The fifth hearing item was for the Grigal Lake Cabin Family Trust, S16, T66N, R19W (Camp Five), for Dennis Grigal at 316 Oak Street, Prescott, WI. *Mark Lindhorst*, St. Louis County Planner, reviewed the staff report as follows.

- A. The request is for a second addition to a nonconforming structure.
- B. The first addition was approved by a variance.
- C. The structure will not exceed the forty percent rule.
- D. The height increase would be considered a zero foot addition and the structure will not exceed the height requirement.
- E. The addition will cover an entryway.
- F. The roof height increase and small addition will not be seen from the lake.

*Mark Lindhorst* reviewed staff's conclusions as follows.

- 1. The request of the applicant is substantial because the applicant is asking for a variance to construct a second addition where only one is allowed by ordinance.
- 2. The variance will not have an effect on government services because it is accessed off a public road and is served by a permitted septic system.
- 3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because the proposed addition to the side is only 45 square feet larger than what currently exists and the change in the projection of the roof does not exceed the allowed 20 foot height within the shore impact zone according to St. Louis County Zoning Ordinance 46. In addition, the structure is well screened from the shoreline.
- 4. No enlargement of the structure can occur without variance.
- 5. The practical difficulty occurred when the lot was developed as a lease lot under the State of Minnesota. In 1989, the property was platted requiring compliance with St. Louis County zoning regulations.

*Mark Lindhorst* noted no items of correspondence.

*Donna O'Connor*, Environmental Services, via report, stated that the Grigal cabin is served by a mound system installed in 1992, designed for three bedrooms. On September 8, 2011, the expansion area was submitted by a licensed ISTS designer. The expansion area will not be impacted by the proposed cabin addition.

*Dennis Grigal*, the applicant, stated the roof is leaking and they are trying to solve the problem by changing the pitch of the roof. The small addition will be used as a mud room.

No audience members spoke on the proposal.

### **MOTION**

**Motion by Filipovich/Johnson** to approve a variance to allow a second addition of 60 square feet and an increased roof height to 20 feet to a nonconforming principal structure. The following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The shore impact zone shall be preserved in a natural state and screening shall be retained.

### **DISCUSSION**

Board member *Coombe* added a friendly amendment to include

3. All demolition material and other waste shall be disposed of in a manner acceptable to St. Louis County Solid Waste Ordinance 45.

The amendment was accepted by both Filipovich and Johnson.

### **DECISION**

The motion, as stated above with the added Condition 3, was approved as follows.

**In Favor:** Coombe, Filipovich, Johnson, Peterson, Pollock, Werschay – 6

**Opposed:** None – 0

**Motion carried 6-0**

The sixth hearing item was for Kathleen Hollander, S18, T54N, R12W (Pequaywan) at 3824 Edmund Boulevard, Minneapolis, MN. *Mark Lindhorst*, St. Louis County Planner, reviewed the staff report as follows.

- A. The request is for a walk-out basement.
- B. The structure does not meet lake setbacks which requires an automatic variance.
- C. The structure would not exceed the 25 foot height requirement.
- D. The location of the septic tank prohibits the cabin from meeting the lake setback.
- E. Staff is concerned about excavating into the shore impact zone. After speaking with the contractor, excavation will only be a few feet into the ground.

*Mark Lindhorst* reviewed staff's conclusions as follows.

1. The request of the applicant is not substantial because the applicant is asking for variance to construct a basement foundation on a structure that does not meet shoreland setback and side yard setback where no additions are allowed.
2. The variance will not have an effect on government services because the property is accessed off a public road and is serviced by a permitted septic system.
3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because the applicant is requesting to construct a basement to an already existing nonconforming principal structure.
4. Due to the location of the structure, no expansion can occur without variance.
5. The practical difficulty occurred when the lot was developed prior to zoning controls.

*Mark Lindhorst* noted one item of correspondence from James and Diane Empey in support of the variance.

*Ed Kerzinski*, Environmental Services, via report, stated that SSTS permit 490 was issued on September 10, 1996. The permit was issued for a two bedroom dwelling. The system consists of a 1,000 gallon septic tank, 500 gallon pump chamber dosing 240 lineal feet (240 square feet) of SB-2 gravel-less trench system. The drainfield size is adequate for a two bedroom dwelling. System expansion area is available on the lot north of the well and storage shed.

*Kathleen Hollander*, the applicant, stated the concrete structure in front of the cabin is an old sand point well that was there when they bought the property.

Board member *Filipovich* inquired as to the height of the roof. *Mark Lindhorst* stated that the roof will not exceed 20 feet. The applicants have enough room to cut three feet into the next grade level without impacting the shore impact zone.

No audience members spoke on the proposal.

## **DECISION**

**Motion by Coombe/Johnson** to approve a variance to allow an addition to a nonconforming structure that is 15.6 feet from the side property line and 70 feet from shoreline. The following conditions shall apply:

1. No excavation for the walk out basement shall occur within the shore impact zone.
2. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
3. All demolition material and other waste shall be disposed of in a manner acceptable to St. Louis County Solid Waste Ordinance 45.
4. A silt barrier shall be in place during construction if necessary.

**In Favor:** Coombe, Filipovich, Johnson, Peterson, Pollock, Werschay – 6

**Opposed:** None – 0

**Motion carried 6-0**



The seventh hearing item was for Gerald Smith, S3, T53N, R15W (Fredenberg) at 4023 Martin Road, Duluth, MN. *Roanne Axdahl*, St. Louis County Planner, reviewed the staff report as follows.

- A. The request is for an 832 square foot accessory structure located 50 feet from the shore.
- B. An existing storage shed and outhouse will be removed.
- C. There is a proposed, future boathouse that will not require a variance.
- D. The new structure shall not be seen from the lake and will be well-screened from the bay.

*Roanne Axdahl* reviewed staff's conclusions as follows.

- 1. The request of the applicant is substantial because the applicant is seeking a variance of 66 percent shoreline setback.
- 2. The variance will not have an effect on government services because this is an already developed area with private road access.
- 3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because the structure will be well screened from the lake and neighboring properties.
- 4. An alternative that could be used to eliminate the need for variance or decrease the extent of the variance being requested is to construct a smaller accessory structure.
- 5. The practical difficulty occurred because this parcel is 220 feet in depth with shoreline on two sides, making it difficult to meet the required shoreline setback.

*Roanne Axdahl* noted one item of correspondence from James Schweiger in support of the variance.

*Ed Kerzinski*, Environmental Services, via report, stated that permit 355 (1-1) was issued on July 10, 1992. The permit was issued for a two bedroom seasonal dwelling. The system consists of a 1,000 gallon septic tank dosing a 10 foot by 60 foot gravity seepage bed. System expansion area is located on the west side of the lot away from the proposed garage.

*Gerald Smith*, the applicant, stated that this is the only location for the garage on the property with the slope, the location of the septic system and where the house is located.

No audience members spoke on the proposal.

## **DECISION**

**Motion by Werschay/Peterson** to approve a variance to allow an accessory structure at a setback of 50 feet from the shoreline. The following conditions shall apply.

- 1. No excavation for the walk out basement shall occur within the shore impact zone.
- 2. Maintain vegetative screening between the structure and bay.
- 3. All demolition material and other waste shall be disposed of in a manner acceptable to St. Louis County Solid Waste Ordinance 45.

**In Favor:** Coombe, Filipovich, Johnson, Peterson, Pollock, Werschay – 6

**Opposed:** None – 0

**Motion carried 6-0**

The eighth hearing item was for Adam Lilyquist, S36, T51N, R16W (Grand Lake) at 5916 Old Miller Trunk Highway, Duluth, MN. *Roanne Axdahl*, St. Louis County Planner, reviewed the staff report as follows.

- A. The request is for a principal structure addition with a two foot road right-of-way setback.
- B. The addition will replace an existing deck.
- C. The property is heavily wooded on three sides. The property across the street is also wooded.
- D. Minnesota Department of Transportation (MNDOT) has given approval for the addition.

*Roanne Axdahl* reviewed staff's conclusions as follows.

- 1. The request of the applicant is substantial because the applicant is seeking a variance of 94 percent road right-of-way setback.
- 2. The variance will not have an effect on government services because this structure will take the place of an existing deck.
- 3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because the parcel is surrounded by heavily wooded areas on three sides and also across Old Miller Trunk Highway.
- 4. An alternative could be to eliminate the need for variance or decrease the extent of the variance being requested by locating the addition to a different location on the dwelling.
- 5. The practical difficulty occurred because this is an existing structure.

*Roanne Axdahl* noted one item of correspondence from Brooke Shannon, Town of Grand Lake, in support of the variance.

*Ed Kerzinski*, Environmental Services, via report, stated that the residence is connected to the Pike Lake Area Wastewater Community System.

*Adam Lilyquist*, the applicant, stated that the right-of-way is 75 feet. As far as relocating the addition to a different location on the structure, the stairs going to the second floor are located at the front of the house and he wants a straight-shot going out. This is the most practical location for the addition.

No audience members spoke on the proposal.

Board member Johnson inquired what the road right-of-way is. *Mary Anderson*, Planning and Development Department, stated the right-of-way is 75 feet. The county retained the right-of-way as it was never abandoned.

## **DECISION**

**Motion by Peterson/Johnson** to approve a variance to allow an addition to a principal structure with a two foot road right-of-way setback.

**In Favor:** Coombe, Filipovich, Johnson, Peterson, Pollock, Werschay – 6

**Opposed:** None – 0

**Motion carried 6-0**

The ninth hearing item was for Mary Morris, S35, T56N, R15W (Colvin) at 2324 South Weiberg Point Road, Makinen, MN. *Mark St. Lawrence*, Environmental Services Department Program Administrator, reviewed the staff report as follows:

- A. The request is for a year-round holding tank.
- B. The existing holding tank was installed in 2008 to replace another holding tank. The permit was issued for installation of a new tank at a reduced setback for seasonal use.
- C. The holding tank is located where there is 50 foot separation to a well. This is the only location to install a holding tank.
- D. The outhouse has been converted to a flush toilet. A clothes washer has been placed in a shower house. Both the existing outhouse and a shower house will be connected to the holding tank.
- E. Minnesota Power notified the St. Louis County Environmental Services Department in March 2011 of year-round usage of the holding tank.
- F. There would be significant variance from Ordinance requirements as St. Louis County Individual Sewage Treatment System Ordinance 55 allows holding tanks for seasonal use only.
- G. The Environmental Services Department would oversee the holding tank by an operating permit.
- H. All 16 neighboring lessees in this area of the Whiteface Reservoir are seasonal.
- I. If the dwelling continued to be used seasonally (April through November), no variance will be required.
- J. Prior to this variance application, the applicants described the use of the property as seasonal on signed documents submitted to the Department. Minnesota Power informed the County of the Morris's year-round use by letter dated March 16, 2011.

*Mark St. Lawrence* noted three items of correspondence from Robert J. Hagadorn and Richard Listemaa in support of the variance request and one from Minnesota Power Shoreland Traditions (Jill Helmer and Matt Radzak) against the variance request.

*Jill Helmer* and *Matt Radzak*, Minnesota Power, spoke as the property owners. *Matt Radzak* stated they looked at possible expansion area on a lot that is not currently leased. The applicants would have to go under the road and up through the neighbor's driveway and clear trees for the expansion area. Siting four sites for expansion is better than siting just one. The lot in question is already highly developed.

*Jill Helmer* stated that the applicants spoke with a staff person at Minnesota Power, saying that they have lived there the past couple of years. Minnesota Power does look at alternative systems for the applicants when asked. The septic designer would need to determine if the alternative system would fit the type of usage and the lot. Minnesota Power staff had issues of where the system would be placed. *Ms. Helmer* added she does not know if the applicant has talked to a septic designer regarding alternative systems.

*Mike Morris*, the applicant, stated that when they applied for the holding tank, they were told to install a water meter. They have kept and maintained their pumping records and water meter readings to obtain their new operating permit for the holding tank. They are in compliance with that requirement. Their intention is to sell their house in town and live at the cabin until after Christmas then take off for a few months. They were told they could not use their holding tank after November.

*Mary Morris*, the applicant, stated that their intention is clear that they want to live at the cabin year-round. If the variance is denied, they will not be able to do so. If the variance is granted, they can request a year-round lease from Minnesota Power.

One audience member spoke in favor of the variance.

*Ken Vickery*, 1620 Palace Court, Port Charlotte, FL, stated he is located at 2346 South Weiberg Point Road. He wholeheartedly endorses granting this variance. He thinks that it is easier to have waste pumped. The lake is protected. It is a better system than a mound system and high-tech systems. Environmental disturbance is not a question of the holding tank but a question of someone using a system dumping into the lake. He has seen soap suds blown from across the lake. The county is doing a good job in making landowners keep records to get the operating permits. The Morris's would like to go to Florida in the winter and keep their place on the lake. They do a good job keeping up their property.

No audience members spoke against this variance.

The *Board of Adjustment* discussed the following.

- A. Board member *Coombe* stated he had discussions with Commissioner Nelson. The Board voted to allow him to participate in the vote.
- B. Inquired if the year-round use of the applicant's holding tank was a violation of the applicant's lease. *Matt Radzak* stated it was in violation.
- C. Stated that the issue of the year-round lease is between Minnesota Power and the applicant. The Board of Adjustment needs to determine if the holding tank should be for year-round use. The applicant would have to deal with Minnesota Power regarding the lease if the variance is granted.
- D. Inquired if Minnesota Power would consider a year-round lease if there is a new septic system on the applicant's property. *Jill Helmer* stated that if the septic system meets all criteria for year-round residency, the staff would consider it. *Mary Anderson*, Planning and Development Department, added that a performance-type system would not require a variance, provided it meets all other requirements.
- E. Inquired if the applicants were using the property year-round. *Mike Morris* stated that they used the property year-round last year. They want to use the property year-round. They added they have not considered alternative systems other than a holding tank on the property across the road.

## **MOTION**

**Motion by Coombe/Peterson** to approve a variance to allow a year-round holding tank on leased land for the following reasons:

1. The Morris's have their pumping and water meter records and have followed Ordinance 55, Section 23.06.
2. The variance will not have an effect on government services because the Environmental Services Department will oversee the operating permit.
3. The variance will not be detrimental unless the Morris's violate Ordinance 55.
4. The variance is feasible; otherwise, the Morris's will lose use of their cabin.
5. There is no reason to doubt that the property was seasonal when documents were submitted to the County.

## **DISCUSSION ON MOTION**

Board member *Pollock* stated that there is difficulty approving a holding tank when there are potential alternatives to a holding tank. The applicants created this hardship. They are not in compliance to using the tank properly.

Board member *Coombe* stated that a holding tank is a good system if the landowners are keeping their records. He added that holding tanks have been approved for year-round use before.

Board member *Werschay* stated that what the Board needs to look at is that the applicant did everything in proper procedure and are asking to change the use from seasonal to year-round.

## **DECISION**

The motion, as stated above, was approved as follows.

**In Favor:** Coombe, Filipovich, Peterson, Werschay – 4

**Opposed:** Johnson, Pollock – 2

**Motion carried 4-2**

**MOTION TO ADJOURN** was made by Dave Peterson. The meeting adjourned at 12:15 pm.